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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,260	09/30/2003	Koichiro Mitsui	4635-003	2073
22429	7590	10/21/2005		
LOWE HAUPTMAN GILMAN AND BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 /310 ALEXANDRIA, VA 22314			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/673,260

Applicant(s)

MITSUI ET AL.

Examiner

Melanie J. Hand

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/23/04 5/25/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

The information disclosure statements (IDS) submitted on January 23, 2004 and May 25, 2004 were filed after the mailing date of the Application on September 30, 2003. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the citizenship of each inventor.

***Claim Objections***

Claims 8-16 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n).

Accordingly, the claims have not been further treated on the merits.

*8-16*

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gesp et al (WIPO Publication No. WO 1997/28774).

With respect to **Claim 1**: Gesp teaches a diaper 10 with layered assembly 12 comprising a top sheet 28, a backsheet 30 and absorbent core 26 enclosed within said topsheet and backsheet. As can best be seen from Fig. 1, diaper 10 also has side flaps with longitudinal edges 22 and 24. (Page 8, lines 17-20, 23-26). Gesp teaches tabs 32 that extend outwardly from said longitudinal edges and are secured to end 18 of diaper 10 that have a corresponding landing zone 34 (Fig. 1) with which they engage. (Page 8, lines 26-31) Gesp teaches that tabs 38 have securement portion 54 that is comprised of a multiplicity of hook elements 54b mounted on substrate 54c for engaging complimentary loops 34a located in landing zone 34. (Page 11, lines 1-6) As can best be seen in Fig. 1, landing zone 34 extends into the laterally opposed regions that are considered herein to constitute the side flaps, therefore tabs 32 engage corresponding said side flaps via the interlocking of hooks 54b and loops 34a. Gesp teaches fingerlift 66 adjacent

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separation joint 68 (Fig. 2), said separation joint having a relatively lower peel strength with respect to the engagement of fastening element 36 with release element 42. Since Gesp teaches that release element 42 is comprised a release substrate 56 comprised of materials that are also typically used to fabricate diaper backsheets (Page 12, lines 4-11), and that the peel strength of joint 68 with respect to release element 42 is relatively low compared to other portions of tab 32, Examiner concludes herein that the peel strength of joint 68 with respect to landing zone 34 will also be relatively lower than the rest of tab 32, resulting in regions of differing peel strength within tab 32 with respect to landing zone 34.

With respect to **Claim 2**: Gesp teaches securement portion 52 comprised of pressure-sensitive adhesive that is concluded herein to be incapable of engaging hooks 54b of hook portion 54.

With respect to **Claim 3**: As stated with respect to Claim 1, securement portion 54 of tab 32 is comprised of substrate 54c. Gesp teaches distal end 36b that does not contain any securement portions or substrates (Fig. 2) and is therefore capable of serving as a thumb portion.

With respect to **Claim 17**: Gesp teaches diaper 10 with fastener tabs 32 comprising securement portions 52 and 54. Securement portion 52 is comprised of pressure sensitive adhesive and is incapable of engaging hook portion 54.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

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subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gesp ('774) in view of Loescher et al (European Patent No. EP 974,326 (IDS))

With respect to **Claims 4 and 5**: Examiner is electing to examine Claim 4 dependent upon Claim 1 herein. Gesp does not teach an engaging force for landing zone 34 with respect to hook portion 54. Loescher teaches a diaper closure system comprising tape tabs 10 comprising male fastening element 15 that engages female fastening element 100. (Fig. 1) Male fastening element 15 is comprised of hooks and female fastening element 100 is comprised of backing 101 and fibrous web structure 102 with a release-treated exposed surface 103. Loescher teaches that the peel strength upon engagement of the adhesive surface 19 of tab 10 with release surface 103 of structure 102 is less than 1.2 N/25mm. (Paragraph 0007, lines 24-26) Loescher teaches that a peel strength greater than 1.2 N/25mm results in contamination of the adhesive fastening surface 19 of tab 10 with fibers from surface 102, compromising the adhesive ability of surface 19 (Paragraph 0058, line 56 – Paragraph 0059, line 2), therefore it would be obvious to someone of ordinary skill in the art to modify the tabs 32 taught by Gesp to have a peel strength with respect to landing zone 34 of less than 1.2 N/25mm as taught by Loescher.

With respect to **Claim 6**: As stated with respect to Claims 4 and 5, Loescher teaches that the adhesive surface 19 of tabs 10 (considered herein to be a non-engaging region with respect to hook elements 15) has a peel strength of less than 1.2 N/25mm with respect to release surface 103 of female element 100.

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Since this measurement corresponds to a peel strength between two regions that are substantially engageable with one another, it is concluded herein that the peel strength between hook elements 15a and adhesive surface 19, two regions concluded previously herein to be substantially non-engageable, will be less than that between adhesive surface 19 and release surface 103, and therefore no greater than 1.2 N/25mm, which is considered low per Applicant (see Specification, Page 24, lines 4-10) and therefore satisfies the limitation set forth in Claim 6.

With respect to **Claim 7**: Gesp does not teach a percentage of area of the hook elements 54b that is occupied by their engaging portions, interpreted herein to be the "heads" of said hooks. Though Applicant has not specified clearly what "the entirety of said hook member" is defined by, Examiner is interpreting this phrase as referring to the total area of the hook member. Loescher teaches that the heads of hook elements 15a are of essentially uniform height (Paragraph 0030, Page 6, lines 52,53) and have an average maximum diameter to average maximum thickness ratio in the range of 1.5:1 to 12:1. (Paragraph 0030, Page 7, lines 1,2) A ratio of 1.5:1 translates to a percentage area occupied by engaging portion of 40%, and a ratio of 12:1 translates to an engagement portion area percentage of 7%. Loescher teaches that the prior art hooks of various shapes are also acceptable (Paragraph 0029, lines 50,51), therefore in the instant case substitution of equivalents ~~is not~~ requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

